ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF IOWA.[2]

COURTS OF APPEAL OF LOUISIANA.[3]

SUPREME JUDICIAL COURT OF MASSACHUSETTS.[4]

SUPREME COURT OF RHODE ISLAND.[5]

ADMIRALTY.

Limitation of Liability—Proceedings by Owner before Suit against him.—Notwithstanding Admiralty Rules, 54–57, the owner of a vessel may institute appropriate proceedings in a court of competent jurisdiction to obtain the benefit of the limitation of liability provided for by sections 4284 and 4285, Rev. Stat., without waiting for a suit to be begun against him or his vessel for the loss out of which his liability arises: *Ex parte Slayton*, S. C. U. S., Oct. Term 1881.

AGENT. See *Bank.*

Banks as Collecting Agents—Negligence of Correspondents.—Where the holder of a bill of exchange payable at a distant place deposits it with a local bank for collection, he thereby assents to the course of business of banks to collect through correspondents, and the correspondent of the local bank to which the bill is forwarded becomes his agent, and is responsible to him directly for negligence in failing to present the bill for payment within the proper time: *Guelich* v. *The National State Bank of Burlington*, 56 Iowa.

Voluntary Association—Contract of Committee.—A member of a voluntary association is not liable for a debt incurred by a committee of the association, if it does not appear that the member was present at the meeting appointing the committee, and there is no evidence of the authority of the committee to incur the debt: *Volger* v. *Ray*, 131 Mass.

ASSIGNMENT. See *Debtor and Creditor; Partnership.*

ATTORNEY.

Contingent Fee—Not Recoverable.—An agreement between an attorney and client, by which the attorney is to prosecute an action for a sum of money in which he has himself no previous interest, and to receive, in case of success, one-half of the sum recovered after deducting the costs of the action, and nothing in case of failure, is unlawful and void for champerty and maintenance; and the client may maintain an action for money had and received against the attorney for the whole amount so recovered, less the costs paid by him: *Achert* v. *Barker*, 131 Mass.

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1881. The cases will probably appear in 14 or 15 Otto.

[2] From Hon. John S. Runnells, Reporter; to appear in 56 Iowa Reports.

[3] From Hon. Frank McGloin, Reporter; to appear in vol. 1 of his Reports.

[4] From John Lathrop, Esq., Reporter; to appear in 131 Massachusetts Reports.

[5] From Arnold Green, Esq., Reporter; to appear in 13 Rhode Island Reports.

BANK. See *Agent; Corporation.*

Employment of Notary to protest Paper—Neglect of Notary.—A bank receiving commercial paper for collection, and placing it in the hands of a notary authorized by law to protest such paper, is not liable for the failure of the notary to perform his duty: *Britton* v. *Nicolls*, S. C. U. S., Oct. Term 1881.

Allen v. *Merchants' Bank*, 22 Wend. 215, disapproved; *Dorchester* and *Milton Bank* v. *New England Bank*, 1 Cush. 177, followed: *Id.*

BILL OF LADING.

Issuing of, for Goods not received—Authority of Master or Shipping Agent—Invalidity in hands of bona fide Purchaser.—Neither the master of a vessel nor the shipping agents of steamboats on the rivers of the interior, at points where they receive and deliver cargo, have authority to bind the vessel or its owners by giving a bill of lading for goods or cargo not received for shipment: *Pollard* v. *Vinton*, S. C. U. S., Oct. Term 1881.

Such a bill of lading being outside of the power conferred by the agent's authority, is void in the hands of a person who may have afterwards in good faith taken it and advanced money on it: *Id.*

BILLS AND NOTES. See *Payment.*

Acceptance of Check—Surrender of Draft to Drawee—Discharge of Drawer.—If the payee of a draft presents and surrenders it to the drawee, and receives during business hours the latter's check for the amount thereof, which is not presented to the bank on which it is drawn until the next day, and payment is then refused, the drawer of the draft is discharged from liability thereon: *Fernald* v. *Bush*, 131 Mass.

CONSTITUTIONAL LAW. See *Limitations, Statute of*

Retroactive Legislation—When valid.—Courts will not readily give a retroactive effect to legislation; but rather hold it applicable alone to the future: *Dours* v. *Cazentre*, 1 McGloin.

Where, however, legislation is not *ex post facto* and does not divest vested rights, impair the obligation of a contract, or otherwise violate the Constitution, it may be made retroactive: *Id.*

Penal Statute—Due Process of Law.—A statute provided that "every person who shall keep a place in which it is reported that intoxicating liquors are kept for sale without having a license therefor, * * * shall be fined not more than $20 or imprisoned not more than thirty days, or both:" *Held*, That the statute was unconstitutional and void; both as violating the fundamental constitutional rights of property and personal freedom; and as depriving a defendant accused under it of property and liberty without due process of law: *State* v. *Kartz*, 13 R. I.

Taxation—Telegraph Messages.—The imposition by a state upon every chartered telegraph company doing business within its borders, of a tax of one cent on every full rate message sent, is unconstitutional as to messages sent out of the state, and as to messages of the federal

government. As to the former it is a regulation of inter-state commerce, and as to the latter it is a tax on the means employed by the government to execute its constitutional powers: *Western Union Telegraph Co.* v. *State of Texas*, S. C. U. S., Oct. Term 1881.

CONTEMPT.

Justice of the Peace—Jurisdiction—Non Payment of Fine—Imprisonment.—A justice of the peace has no authority to commit a person to prison for non-payment of a fine for contempt, where the judgment imposing the fine does not provide for imprisonment; and he is liable for damages, in an action of tort, to a person so illegally committed: *Lanpher* v. *Dewell*, 56 Iowa.

CONTRACT.

Made by Officer of Corporation—Personal Liability on.—A contract containing the words "we promise to pay," and signed by two persons describing themselves respectively as "president school board" and "secretary school board," but which contained no reference to any school district, was held to be the personal obligation of the signers, who could not show by parol evidence that such was not in fact the intention: *Wing* v. *Glick*, 56 Iowa.

CORPORATION.

Ultra Vires—Railroad—Musical Festival.—It is beyond the powers of a railroad corporation chartered by the legislature, or of a corporation organized under the statute of 1870, ch. 224, for the manufacture and sale of musical instruments, to guarantee the payment of expenses of a musical festival; and no action can be maintained against either corporation upon such a guaranty, although it was made with the reasonable belief that the holding of the proposed festival would be of great pecuniary benefit to the corporation by increasing its proper business, and the festival has been held and expenses incurred in reliance upon the guaranty: *Davis* v. *Old Colony Railroad*, 131 Mass.

Transfer of Stock—Lien for Debt of Transferror—Waiver of.—A statutory provision that no stockholder indebted to a bank shall transfer his stock until payment of his debt, may be waived by the bank or by its cashier acting for it by virtue of an express or implied authority: *Cecil National Bank* v. *Watsontown Bank*, S. C. U. S., Oct. Term 1881.

The fact that the cashier was a member of the firm which owned the stock and which was indebted to the bank, will not relieve the bank from the effect of such a waiver, there being no collusion on the part of the transferree and the cashier's membership in the firm being known to the directors of the bank: *Id.*

A complete transfer of the title to the stock may be made by means of appropriate entries on the stock ledger of the bank without the issuing of a certificate to the transferree, and where the bank made such a transfer and allowed the transferree who had accepted the stock as collateral security, to rest in the belief that he had the title, it could not afterwards, upon the insolvency of the transferror, enforce a statutory lien on the stock for the latter's debt: *Id.*

Criminal Law.

Misdemeanor by Married Woman—Proximity of Husband—Coercion.—The mere proximity of a husband not actually present when his wife commits a minor offence, will not raise in her favor the presumption that she acts under his coercion: *State* v. *Shee*, 13 R. I.

Any inference of coercion from such proximity is a question of fact: *Id.*

Damages.

Breach of Contract to convey Land.—The measure of damages for the breach of a contract to convey land, where it occurs without the fault of the vendor, is the consideration paid him for the land, with interest, but if the failure occurs through his fault, the vendee may recover such consideration, or the value of the land at the time the conveyance should have been made, if greater than the consideration paid: *Yokom* v. *McBride*, 56 Iowa.

Debtor and Creditor.

Assignment for Creditors—Powers given to Assignee by the deed.—A. made an assignment for the benefit of his creditors of his estate, part of which was under mortgage, and in the deed of assignment empowered the assignee to sell at public or private sale, to buy in the premises, to resell without responsibility for loss, and also to mortgage, and from the proceeds to pay, first, the creditors secured by mortgage, and then the other creditors of the assignor; *Held*, that the deed of assignment was valid as against creditors, for it did not appear that any benefit accrued to the assignor, at their expense, from the powers given: *Waldron* v. *Wilcox*, 13 R. I.

A plaintiff has no greater rights against the garnishee than the principal defendant debtor would have if himself suing; *Id.*

Estoppel. See *Sheriff's Sale.*

Execution.

Exemption—Construction of Statute—Salary.—The rule is that the property of a debtor is the common pledge of all his creditors, and exemptions, being in the nature of exceptions to the general law, will be strictly construed: *Pitard* v. *Carey*, 1 McGloin.

One who does work on a public building, under a contract, is not an officer within a statutory exemption of the salary of an office: *Id.*

Frauds, Statute of.

Contract for Employment for a Year—When within Statute.—August 20th, an oral contract was made between A. & B., by which A. was to enter B.'s service for one year, A. to begin the term of service as soon as he could. A. began work for B. August 27th. *Held*, that the contract was within the Statute of Frauds, being an oral contract not to be performed within a year. *Held, further*, that an action by A. against B. for a breach of this contract could not be maintained: *Sutcliffe* v. *The Atlantic Mills*, 13 R. I.

Husband and Wife. See *Criminal Law.*

INTEREST. See *Limitations, Statute of.*

INTERPLEADER.

Latent Ambiguity in Will—Uncertain Description of Legatee—Parol Evidence—Costs.—If a legatee is not described in a will with exact accuracy, and the description may, in some respects, be applicable to different persons, each of whom claims the legacy, the executor may maintain a bill of interpleader for the determination of the person to whom the legacy is payable: *Moss* v. *Stearns*, 131 Mass.

Extrinsic evidence of the conduct and the declarations of a testator is admissible to show his relation to, and state of feeling towards, any of the respective claimants of a legacy, where the legatee is not described with entire accuracy, and the description is in some respects applicable to each of the claimants: *Id.*

A woman who had two nephews, one named Joseph White Sprague, and the other Joseph Sprague Stearns, by her will bequeathed a legacy "to my nephew J. S. Sprague." *Held*, that the inference was that she intended Joseph White Sprague; and that, in the absence of extrinsic evidence sufficient to control this inference, he was entitled to the legacy: *Id.*

If the ambiguity of a will renders it doubtful to which of two persons a legacy shall be paid, the costs as between solicitor and client, of all parties to a bill of interpleader by the executor are to be paid out of the general estate of the testator: *Id.*

JUDGMENT.

Revival—Effect on Original Judgment—Appeal.—A judgment of revival does not validate or otherwise alter the nature or effect of the original judgment: *Weiller* v. *Blanks*, 1 McGloin.

The fact that a plaintiff has appealed from a judgment in his favor, not entirely satisfactory to him, does not prevent him from suing for its revival: *Id.*

Such a proceeding for revival will not prejudice his rights on appeal. *Id.*

Judgments for money are prescribed by ten years from the date of their rendition: *Id.*

The prescription in such case runs from the date of the rendition by the inferior court, and not from that of its confirmation by the appellate tribunal: *Id.*

The date of such "rendition" by the inferior court is that of the signing of the judgment by the judge thereof: *Id.*

The pendency of an appeal, even suspensive, does not stay the course of prescription against a judgment, no matter whether plaintiff or defendant be appellant: *Id.*

LANDLORD AND TENANT.

Lien for Rent—Receivership of Tenant's Property.—The lien of a landlord will not be defeated by the conversion of the property of a tenant into money by a receiver under an order of court, but will attach to the proceeds in the receiver's hands: *Gilbert* v. *Greenbaum*, 56 Iowa.

Limitations, Statute of.

Action for False Search by Public Officer.—The action against a recorder of mortgages, for furnishing a false certificate, arises *ex contractu* and not *ex delicto*, and hence the prescription of one year does not apply: *Brown* v. *Penn*, 1 McGloin.

Coupons—Time when Limitation commences to Run.—The cause of action upon a coupon of a municipal bond, whether detached from the bond or not, accrues, and the statute commences to run at the maturity of the coupon: *Town of Koshkonong* v. *Burton*, S. C. U. S., Oct. Term 1881.

It is within the constitutional power of the legislature to require as to existing causes of action that suits for their enforcement shall be barred unless brought within a less period than that prescribed when the contract was made. The exertion of this power is, however, subject to the fundamental condition that a reasonable time, taking all the circumstances into consideration, be given by the new law before the bar takes effect: *Id.*

If interest upon interest is allowed by the local law at the time of the contract, that right cannot be impaired by a subsequent legislative declaration as to what was, in the judgment of that department, the true intent and meaning of the statutes prescribing and limiting the rate of interest in force when the contract was made: *Id.*

Mortgage—Revival of Debt—Intervening Liens.—A note and mortgage which have become barred by the Statute of Limitations may be revived by an admission of indebtedness by the mortgagors, and the priority of the mortgage lien will thereby be preserved as against subsequent liens, taken before the mortgage became barred, and not foreclosed until after it is revived: *Day* v. *Baldwin*, 34 Iowa 380, distinguished; *Kerdt* v. *Porterfield*, 56 Iowa.

Lunatic.

Validity of Contracts.—Persons of unsound mind will be bound by their executed contracts where such contracts are fair and reasonable and were entered into by the other parties without knowledge of the mental unsoundness, in the ordinary course of business, and where the parties cannot be placed in *statu quo*: *Abbott* v. *Creal*, 56 Iowa.

Mortgage. See *Limitations, Statute of; Sale.*

Municipal Corporation.

Performance of Public Duty—Negligence—Liability.—A private action does not lie at common law against a municipal corporation, either for the non-performance or for the negligent performance of a public duty imposed on the corporation, without its request, by general statute, unless it receives or is entitled to receive some privilege or profit in consideration of the duty: *Wixon* v. *City of Newport*, 13 R. I.

Nor does such an action lie when the duty, not being imposed by statute, is voluntarily assumed under and in pursuance of a general law of the state: *Id.*

The school laws of Rhode Island create a school system under which the towns are encouraged but not absolutely required to maintain public

schools. A. was injured by a defect in the heating apparatus in a public school of the city of Newport, A. being a pupil in the school: *Held*, That the city was not liable for the injury suffered: *Id.*

Ordinance—Evidence—Nuisance—Use of Highway.—The courts will not take notice, *ex propria motu*, of municipal legislation; ordinances, &c., of municipal governments must be established by proof: *Laviosa* v. *Chicago, St. L. and N. O. Railroad Co.*, 1 McGloin.

Where, by law, certain restrictions are placed upon the construction of awnings, sheds or other works, there is an implied authorization to erect such structures, provided the prohibition of the law be respected: *Id.*

Without general legislation, denouncing all of its special class or character as nuisance, the municipal authorities of a city cannot declare any particular thing to be a nuisance and abate it as such: *Id.*

Municipal ordinances must be reasonable and not arbitrary or oppressive, otherwise they are void; and a railroad company may be prevented from making an unreasonable or oppressive use of a street or banquet, despite municipal legislation expressly authorizing such particular manner of use: *Id.*

NUISANCE. See *Municipal Corporation.*

ORDINANCE. See *Municipal Corporation.*

PARTNERSHIP.

Indefinite duration—Right to withdraw—Advances by Partner.—A partner of a firm formed for an indefinite time may withdraw when he pleases, and dissolve the partnership, if he acts without any fraudulent purpose; and he is not liable to his copartner for damages caused by such withdrawal: *Fletcher* v. *Reed*, 131 Mass.

A partner, to whom the firm is indebted for advances made by him, is entitled, in a settlement of its affairs, to charge the firm with the amount paid by him: *Id.*

Purchase from Copartner—Knowledge of Insolvency.—The purchase by one partner of his copartner's interest, in the firm property, is not rendered void for fraud because of the fact that the buyer has knowledge of his partner's insolvency, if he had no reason to suppose it is the latter's intention to defraud his creditors by the sale: *Id.*

Interest in, when included in General Assignment.—An assignment of "all and all manner of goods, chattels, debts and effects and other estate of what kind and nature soever, and wheresoever situate, of which the assignor is the lawful owner excepting only what and so much as is exempt from attachment," conveys the assignor's interest as copartner in the property of his copartnership: *Stiness* v. *Pierce*, 13 R. I.

PATENT.

Bill for account of Profits merely—When Maintainable.—A bill in equity for a naked account of profits and damages against an infringer of a patent cannot be sustained. Such relief can only be afforded in equity where it is incidental to some other equity, the right to enforce which

secures to the patentee his standing in court: *Root* v. *Lake Shore & M. S. Railway Co.*, S. C. U. S., Oct. Term 1881.

The equity to which such relief is usually incidental is the right to an injunction against infringement; but other grounds of equitable relief may arise, as where the title of the complainant is equitable, or equitable interposition is necessary on account of the impediments which prevent a resort to remedies purely legal, and such an equity may arise out of and inhere in the nature of the account itself, springing from special and peculiar circumstances which disable the patentee from a recovery at law or render his legal remedy difficult, inadequate and incomplete, and as such cases cannot be defined more exactly, each must rest upon its own particular circumstances as furnishing a satisfactory ground of exception from the general rule: *Id.*

PAYMENT.

Acceptance of Note—When Payment—Question of Fact.—The giving and acceptance of a promissory note of a debtor for a pre-existing debt secured by a mortgage is only presumptive evidence of payment; and it is a question of fact for the jury, upon all the evidence in the case, whether the note was given and received in payment of the mortgage debt; *Dodge* v. *Emerson* 131 Mass.

At the trial of a writ of entry to foreclose a mortgage, the only question was whether the debt secured by the mortgage had been paid by the giving and acceptance of a new promissory note for the note secured by the mortgage. The judge in the course of his charge remarked to the jury that in the contingency of the maker of a promissory note becoming insolvent, an old note and mortgage might be more valuable than a new note and mortgage. *Held*, that the tenant had no ground of exception. *Id.*

PRACTICE.

Ex parte Decree—Unsworn Statements.—Any judicial determination arrived at without notice and an opportunity to parties opposed in interest of being heard, is null and void: *Wood* v. *Howard*, 1 McGloin.

In the absence of general consent, courts cannot receive unsworn statements, in lieu of formal proof; and a decree based upon such unsworn statements, will be set aside: *Id.*

RECEIVER. See *Landlord and Tenant.*

SALE. See *Trover.*

Conditional Sale in form of Lease—Mortgage by Lessee—Attachment.—A. conveyed to B. personalty under an agreement purporting to be a lease, by the terms of which certain payments were to be made by B. to A., at fixed times. In case B. failed to pay as provided, A. might take possession of the personalty. On the expiration of the lease, B. having complied with its terms, was to receive a bill of sale of the personalty; pending the lease, B. mortgaged the personalty to C. Subsequently the last payment was made by B. to A., and B. received a receipted bill of sale from A. A. immediately attached the personalty in an action against B., whereupon C. replevied the personalty. *Held*, that the so-called lease was a conditional sale. *Held, further*, that B. acquired under this conditional sale, rights of which A. could not deprive

him and which in the absence of any stipulation forbidding it, B. could sell or mortgage. *Held, further*, that on the last payment the title to the personalty vested in B., whose mortgage became valid, and took precedence of A.'s attachment: *Carpenter* v. *Scott*, 13 R. I.

Williams v. *Briggs*, 11 R. I., 476, and *Cook* v. *Corthell*, *Id.* 482, explained and distinguished: *Id.*

Sheriff's Sale.

Rescission—When Creditor Estopped—Offer to Restore.—Where a creditor participates in the distribution of the proceeds of property sold under execution, he ratifies the same and is estopped from subsequently attacking it: *Adams* v. *Moulton*, 1 McGloin.

Such a participation, however, if made in error of fact, might, upon proper allegations, be rescinded: *Id.*

Such rescission could only be decreed in a suit for that purpose, to which all who participated in the proceeds are made party: *Id.*

A person asking for the rescission of a contract, &c., must, as a prerequisite to his suit, return or tender what he has received from the transaction complained of, and otherwise restore, so far as possible to him, the condition of things as they stood before the contract, &c., that he attacks: *Id.*

Shipping.

United States Commissioners' Fees—Reshipment of Sailors.—The provision of sect. 4513, Revised Statutes, that the fee of $2 required to be paid to the shipping commissioner for each seaman shipped, under sects. 4511 and 4512, shall not be exacted, where, on the return of the vessel, the sailor reships in the same vessel for another voyage, applies to reshipments for all voyages succeeding the first in regular order, and is not limited to the reshipment for the one voyage immediately following the one at which the fees were paid: *Young* v. *American Steamship Co.*, S. C. U. S., Oct. Term 1881.

Statute. See *Exemption.*

Taxation. See *Constitutional Law*

Telegraph. See *Constitutional Law.*

Trial.

Time of Introduction of Evidence.—A court may, in its discretion, allow the introduction of evidence after the arguments of counsel have been concluded: *Darland* v. *Rosencrans*, 56 Iowa.

Trover.

Conditional Sale—Right of Vendor.—If a chattel is sold and delivered upon condition that it shall be paid for on a certain day, and shall remain the property of the seller until paid for, the seller has not such possession or right to immediate possession as will support an action of tort in the nature of trover, against an officer who has attached the chattel as the property of the purchaser, brought before the day named for payment: *Newhall* v. *Kingsbury*, 131 Mass.

Sale obtained by Fraud—Action by Vendor against Vendee—Damages.—A. sold to B. certain personalty, on credit, upon the faith of B.'s representations, which proved false and fraudulent. B. soon after the sale mortgaged the personalty to a third party and also made some payments to A. on account. *Held*, that A. could maintain trover and conversion against B. without first notifying B. that the contract of sale was rescinded, without demanding the personalty from B, and without tendering to B. the amount received in part payment. *Held, further*, that the amount received by A. as part of the consideration, was, upon his bringing trover against B., retained as part of the indemnity due from B., and was to be deducted from the amount of damages recoverable by A. from B.: *Warner* v. *Vallily*, 13 R. I.

In trover, the rule measuring damages is flexible. If the plaintiff has a qualified interest in the chattel converted, he will recover a sum sufficient to indemnify him, not the whole value of the chattel with interest from the time of conversion: *Id.*

ULTRA VIRES. See *Corporation.*

UNITED STATES.

Land Department—Conclusiveness of Rulings.—The courts cannot exercise any direct appellate jurisdiction over the rulings of the officers of the Land Department, nor can they reverse or correct them in a collateral proceeding between private parties founded upon them where no fraud has been practised upon the officers and they themselves are not chargeable with any fraudulent conduct: *Quimby* v. *Coulan*, S. C. U. S., Oct. Term 1881.

VENDOR AND VENDEE.

Vendor's Lien—Waiver of—Taking of other Security.—Where the vendor of real estate took in part payment therefor the secured note of a third person, endorsed by the vendee, it was held that he thereby waived his right to a vendor's lien, though the security taken afterward proved worthless, it being considered good by all the parties at the time it was taken: *Kendrick* v. *Eggleston*, 56 Iowa.

VERDICT.

Compromise Verdict.—When a verdict has been arrived at by means other than conviction of judgment on the part of the jury, this, if proven, furnishes just cause for remanding: *Dreyfus* v. *Lincoln*, 1 McGloin.

The mere fact that the jury has allowed plaintiff less than the evidence shows him entitled to, if his theory of the case be adopted, does not establish the fact that the verdict was a compromise one: *Id.*

Circumstantial evidence can supply the place of direct proof only when it points plainly to a particular conclusion, and when it can be reasonably explained only upon such particular theory: *Id.*

WILL. See *Interpleader.*